IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.444 OF 2003

Goutam Rahu Suryagandh
Age: 35 yrs.
Occupation:Service,
R/o.Shirte, Tal.Walwa,
Dist.Sangli
(At present lodged at Kolhapur
Central Jail, Kalamba) ..Appellant.
(Orig.Accused)

V/s.

1. State of Maharashtra.
2. Surekha Bhagwan Suryagandh
   age: 30 yrs.
   Occupation: Household & Labour work,
   R/o Shirte, Tal.Walwa, Dist.Sangli. ..Respondents.
   (No.1 orig.
   Complainant
   No.2 Victim.

Mr.Pratap Patil for Appellant.

Mr.V.B.Konde-Deshmukh, APP for Respondent-State.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 25, 2006.

JUDGMENT :

1. This appeal takes exception to the Judgment and Order passed by the I Ad-hoc Additional Sessions Judge, Islampur dated March 3, 2003 in Sessions Case No.37 of 2000. The appellant was chargesheeted and tried for offence punishable under section 341 and 307 of the I.P.Code. It is relevant to note that the appellant is the brother in law of injured Surekha

Bhagwan Suryagandh. The appellant happens to be brother of the husband of said Surekha(P.W.3). It is the prosecution case that on 11th March, 2000, Surekha went to Islampur Rural Hospital alongwith her son Santosh from village-Shirte as her son was suffering from heart-disease. As the concerned doctor was not available, she had to return on the next day. Surekha left behind Santosh with the complainant at village Sakharale and returned to Shirte. It is the prosecution case that on 12th March, 2000 when Surekha(P.W.3) got down from vehicle after reaching Sakharale and when she was proceeding further, the accused rushed towards her and questioned as to what was the reason for her frequent visit to Islampur. Thereafter, the appellant/accused pulled her and put cloth in her mouth and took her to a nearly sugar cane field. There the appellant/accused made her (PW 3) lie down and inserted the knife, weapon used in the commission of offence, in her private part. The appellant accused, thereafter, escaped from the scene. The injured Surekha reached the house of real brother of her husband in the same village, where she was attended to by the family members and local police was informed. The injured Surekha was taken to the Government hospital. The Doctor on duty made noting

of the nature of the injury in the hospital record. On the basis of this allegation offence under section 341 and 307 of I.P.Code came to be registered against the appellant. On completion of Investigation, charge-sheet was filed and trial was committed to the Sessions Court, Islampur.

2. The trial Court accepted the version of P.W.3 Surekha. Her evidence has been found to be natural. The fact deposed to by her that injury was inflicted on her by the appellant is corroborated by the medical evidence, both documentary as well as oral. There are other witnesses who have supported the prosecution case and whose evidence has been accepted by the trial Court. On this basis, the trial Court proceeded to record finding of guilt against the appellant for offence punishable under section 341 as well as 307 of I.P.Code. The appellant has been convicted and sentenced to suffer Simple imprisonment for one month for offence punishable under section 341 of I.P.Code; and Rigorous imprisonment for seven years and to pay fine of Rs.2000/- i.d. to suffer R.I. for one month with regard to the offence punishable under section 307 of I.P.Code. This Judgment and Order is subject matter of challenge in the present appeal.

3. With the assistance of the counsel appearing for the parties, I have gone through the relevant materials on record. In my opinion, the view taken by the trial Court on analysing the evidence of P.W.3, who is the victim and suffered injury at the hands of the appellant will have to be accepted as natural evidence. The Court below has considered the relevant aspect on the basis of which her evidence was challenged. However, the challenge has been answered by recording tangible reasons. I am in agreement with the view taken by the trial Court with regard to the analysis of evidence of P.W.3 in paragraph-14 to paragraph-19 from pages 86 to 91 of the impugned Judgment. The view so taken is a possible view. I have no hesitation in upholding the approach as well as the conclusion of the trial Court with regard to the analysis of evidence of P.W.3 who is the victim and injured witness. The evidence of P.W.3 gets corroborated by the medical evidence in the form of certificates issued by the Government Hospital as well as Private Hospital.

4. Indeed, the counsel for the appellant would contend that there is discrepancy between the two medical certificates. However, this discrepancy is

not of such nature to give benefit of doubt to the appellant. The fact that the appellant was responsible for the injury has been spoken by P.W.3. The injury caused to P.W.3 has been proved by the medical evidence in the two certificates before the court as well as in the evidence of P.W.5 and P.W.6. Taking any certificate, the injury was grievous injury. It is seen that in both the certificates the part of the body where the injury has occurred as shown in both the certificates, is the same. Besides the prosecution case is corroborated by the evidence of other witnesses. It is not necessary to burden this Judgment by reiterating the view taken by the trial Court in this behalf. Suffice it to observe that the opinion recorded by the trial Court on analysing the prosecution evidence is a possible view and will have to be upheld as it is. It is well established position that merely because some other view is possible on the basis of the same evidence, that by itself cannot be ground to exercise appellate jurisdiction. In other words, no case for interference in the appeal is made out.

5. The counsel for the appellant argued that no recovery of any weapon has been made at the instance of the appellant. The weapon was however, recovered

from the brother of the appellant. That makes no difference to the ultimate conclusion reached by the trial Court. The crucial evidence in the case on hand is that of injured witness P.W.3. She has spoken about the role of appellant in the commission of the offence. Her evidence has remained unshattered. Once her evidence is accepted, which is also corroborated by the medical evidence, the fact that recovery of weapon was not made from the appellant will make no difference. In my opinion, the appeal is devoid of merits.

6. Accordingly, this appeal fails. The same is dismissed.